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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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STUDENT A, by and through PARENT A, her guardian; STUDENT B, by and through PARENT B, his guardian; STUDENT C, by and through PARENT C, his guardian; STUDENT D, by and through PARENT D, her guardian, each one individually and on behalf of all other similarly situated children;)	CASE NO. 3:17-cv-02510-MEJ
)	
)	DEFENDANTS' ANSWER TO
)	COMPLAINT FOR INJUNCTIVE AND
)	DECLARATORY RELIEF
)	
)	DEMAND FOR JURY TRIAL
)	
Plaintiff,)	
)	
v.)	
)	
THE BERKELEY UNIFIED SCHOOL DISTRICT; DONALD EVANS, in his official capacity as the Superintendent for the Berkeley Unified School District; BEATRIZ LEYVA-CUTLER, TY ALPER, JUDY APPEL, JOSH DANIELS, and KAREN HEMPHILL, each in his or her official capacity as a director of the Berkeley Unified School District Board of Education; THE BOARD OF EDUCATION OF THE BERKELY UNIFIED SCHOOL DISTRICT,)	
)	
Defendants.)	

COME NOW Defendants BERKELEY UNIFIED SCHOOL DISTRICT ("BUSD") and
THE BOARD OF EDUCATION OF THE BERKELY UNIFIED SCHOOL DISTRICT (the
"BUSD Board"; BUSD and the BUSD Board are collectively referred to hereinafter as

“Defendants”), and answers Plaintiffs’ Complaint for Injunctive and Declaratory Relief (the “Complaint”) as follows:

INTRODUCTION

1. Responding to Paragraph 1 of the Complaint, Defendants admit that the ability to read is a critical foundation to a student’s success. Defendants lack information sufficient to form a belief as to the remaining allegations contained in this Paragraph, and on that basis deny them.

2. Responding to Paragraph 2 of the Complaint, Defendants admit that is serves more than 9,400 students and that reading disorders may impact a large number of BUSD students in any given school year. Defendants deny that BUSD has systematically refused to educate itself about reading disorders or about how to timely identify and appropriately serve students who have them. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

3. Responding to Paragraph 3 of the Complaint, Defendants admit that dyslexia may be characterized by difficulties with word recognition and by poor spelling and/or decoding abilities. Defendants further admit that dyslexia and other reading disorders are generally treatable and that a variety of research-based reading interventions can be implemented to increase a child’s reading skill and performance. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

4. Responding to Paragraph 4 of the Complaint, Defendants admit that students with reading disorders may benefit from certain interventions and accommodations. Defendants deny that BUSD has been unwilling to exert time and resources to identify students with reading disorders. Defendants further deny that BUSD has failed to provide students with reading disorders with services and reasonable accommodations. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

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1 5. Responding to Paragraph 5 of the Complaint, Defendants deny that BUSD has
2 refused to identify or to serve its students with reading disorders. Defendants further deny that
3 BUSD has failed its students on “multiple fronts.” Defendants lack sufficient information upon
4 which to form a belief as to the truth of the remaining allegations contained in this Paragraph,
5 and on that basis deny them.

6 6. Responding to Paragraph 6 of the Complaint, Defendants deny each and every
7 allegation contained within this Paragraph.

8 7. Responding to Paragraph 7 of the Complaint, Defendants admit that a child with a
9 disability in one or more of the 13 disabilities enumerated under the IDEA and who’s
10 impairment requires instruction and services which cannot be provided with modification of the
11 regular school program in order to ensure that the child is provided a free appropriate public
12 education (“FAPE”) may be considered a student with a specific learning disability (“SLD”) and
13 may receive special education and related services. Defendants further admit that the California
14 Legislature has enacted AB 1369 to require that the Superintendent of Public Instruction develop
15 and disseminate program guidelines for dyslexia to be used to assist regular education teachers,
16 special education teachers, and parents to identify and assess pupils with dyslexia. Defendants
17 note that the remaining allegations contained in this Paragraph contain legal conclusions to
18 which no response is required. To the extent any remaining allegations could be construed as
19 containing factual allegations, Defendants deny each and every remaining allegation contained in
20 this Paragraph.

21 8. Responding to Paragraph 8 of the Complaint, Defendants note that the entire
22 paragraph contains legal conclusions to which no response is required. To the extent this
23 Paragraph could be construed as containing factual allegations, Defendants deny each and every
24 allegation contained in this Paragraph.

25 9. Responding to Paragraph 9 of the Complaint, Defendants note that the entire
26 paragraph contains legal conclusions to which no response is required. To the extent this
27 Paragraph could be construed as containing factual allegations, Defendants deny each and every
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1 allegation contained in this Paragraph.

2 10. Responding to Paragraph 10 of the Complaint, Defendants admit that BUSD is
3 subject to certain federal and state laws which require that BUSD provide qualifying students
4 with disabilities with a FAPE in the LRE. Defendants further respond that the remaining
5 allegations contained in this Paragraph contain legal conclusions to which no response is
6 required. To the extent the remaining allegations could be construed as containing factual
7 allegations, Defendants deny each and every remaining allegation contained therein.

8 11. Responding to Paragraph 11 of the Complaint, Defendants deny each and every
9 allegation contained within this Paragraph.

10 12. Responding to Paragraph 12 of the Complaint, Defendants deny each and every
11 allegation contained within this Paragraph.

12 13. Responding to Paragraph 13 of the Complaint, Defendants admit that in 2007,
13 BUSD partnered with the City of Berkeley, UC Berkeley, Berkeley Community College and
14 several other community organizations to form a partnership around shared visions for academic
15 improvement for all Berkeley's public school children. BUSD and its partners refer to this
16 program as the "2020 Vision" program. As part of the 2020 Vision program, the "2020
17 Partners" set agreed-upon goals to advance equitable academic and health outcomes for all
18 children. One of the "2020 Vision" goals is that every child be able to read proficiently by the
19 end of third grade. BUSD monitors its progress toward achieving the "2020 Vision" goals and
20 reports its progress to the public. In its Bi-Annual Report, Winter 2016, BUSD reported
21 continued improvement in the "2020 Vision" goal pertaining to third grade literacy. As of 2015,
22 70% of all third grade children were reading proficiently, which represented a 9% increase from
23 2011. Defendants deny the remaining allegations contained within this Paragraph.

24 14. Responding to Paragraph 14 of the Complaint, Defendants deny that they have
25 "relegated" BUSD students to conditions that "manifestly fail the standards and criteria
26 demanded by the law." Defendants further deny that BUSD has "systemically" refused to
27 provide any student with necessary special education or related aids and services. Defendants
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further deny that they have failed to provide Plaintiffs or other similarly situated students with a FAPE in the LRE. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

15. Responding to Paragraph 15 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

16. Responding to Paragraph 16 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

JURISDICTION

17. Responding to Paragraph 17 of the Complaint, Defendants admit this Court has subject matter jurisdiction over this action.

18. Responding to Paragraph 18 of the Complaint, Defendants admit this Court has supplemental jurisdiction over Plaintiffs' Section 56000 claims.

19. Responding to Paragraph 19 of the Complaint, Defendants admit this Court has jurisdiction to issue a declaratory judgment.

VENUE

20. Responding to Paragraph 20 of the Complaint, Defendants admit venue is proper in the Northern District of California.

21. Responding to Paragraph 21 of the Complaint, Defendants admits the allegations contained therein.

22. Responding to Paragraph 22 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

INTRADISTRICT ASSIGNMENT

23. Responding to Paragraph 23 of the Complaint, Defendants admit this action arises in Alameda County and that assignment to the San Francisco or Oakland Divisions of the District Court for the Northern District is proper.

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PARTIES**Plaintiffs**

24. Responding to Paragraph 24 of the Complaint, Defendants admit that Student A is a student at a BUSD elementary school. Defendants deny that BUSD has failed to provide Student A with a FAPE in the LRE. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

25. Responding to Paragraph 25 of the Complaint, Defendants admit that Student B is a student at a BUSD elementary school. Defendants deny that BUSD has failed to provide Student B with a FAPE in the LRE. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

26. Responding to Paragraph 26 of the Complaint, Defendants admit that Student C is a student at Berkeley High School. Defendants deny that BUSD has failed to provide Student C with a FAPE in the LRE. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

27. Responding to Paragraph 27 of the Complaint, Defendants admit that Student D was a student at Berkeley High School. Defendants deny that BUSD has failed to provide Student D with a FAPE in the LRE. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

28. Responding to Paragraph 28 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

29. Responding to Paragraph 29 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this

Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

30. Responding to Paragraph 30 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

31. Responding to Paragraph 31 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

Defendants

32. Responding to Paragraph 32 of the Complaint, BUSD is a special purpose governmental agency responsible for providing public elementary and secondary education to children who reside within the district. BUSD receives federal funding. Defendants note that the remaining allegations contained within this Paragraph contain legal conclusions to which no response is required. To the extent the remaining allegations could be construed as containing factual allegations, Defendants deny each and every remaining allegation contained therein.

33. Responding to Paragraph 33 of the Complaint, Defendants admit that Donald Evans is the Superintendent of BUSD and was appointed by the BUSD Board. Defendants further admit that Donald Evans is generally responsible for ensuring that Defendants policies are implemented in BUSD schools. Defendants deny the remaining allegations contained in this Paragraph.

34. Responding to Paragraph 34 of the Complaint, Defendants admits this paragraph contains excerpts from BUSD Board Bylaws 9000, which said document speaks for itself.

35. Responding to Paragraph 35 of the Complaint, Defendants admit that Beatriz Leyva-Cutler, Ty Alper, Judy Appel, Josh Daniels and Karen Hemphill are Directors of the BUSD Board. Defendants note that the remaining allegations contained within this Paragraph

1 contain legal conclusions to which no response is required. To the extent the remaining
2 allegations could be construed as containing factual allegations, Defendants deny each and every
3 remaining allegation contained therein.

4 36. Responding to Paragraph 36 of the Complaint, Defendants note that the entire
5 paragraph contains legal conclusions to which no response is required. To the extent this
6 Paragraph could be construed as containing factual allegations, Defendants deny each and every
7 allegation contained in this Paragraph.

8 **STATUTORY FRAMEWORK**

9 37. Responding to Paragraph 37 of the Complaint, Defendants note that the entire
10 paragraph contains legal conclusions to which no response is required. To the extent this
11 Paragraph could be construed as containing factual allegations, Defendants deny each and every
12 allegation contained in this Paragraph.

13 **IDEA**

14 38. Responding to Paragraph 38 of the Complaint, Defendants note that the entire
15 paragraph contains legal conclusions to which no response is required. To the extent this
16 Paragraph could be construed as containing factual allegations, Defendants deny each and every
17 allegation contained in this Paragraph.

18 39. Responding to Paragraph 39 of the Complaint, Defendants note that the entire
19 paragraph contains legal conclusions to which no response is required. To the extent this
20 Paragraph could be construed as containing factual allegations, Defendants deny each and every
21 allegation contained in this Paragraph.

22 40. Responding to Paragraph 40 of the Complaint, Defendants note that the entire
23 paragraph contains legal conclusions to which no response is required. To the extent this
24 Paragraph could be construed as containing factual allegations, Defendants deny each and every
25 allegation contained in this Paragraph.

26 **Child Find Duty**

27 41. Responding to Paragraph 41 of the Complaint, Defendants note that the entire
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1 paragraph contains legal conclusions to which no response is required. To the extent this
2 Paragraph could be construed as containing factual allegations, Defendants deny each and every
3 allegation contained in this Paragraph.

4 42. Responding to Paragraph 42 of the Complaint, Defendants note that the entire
5 paragraph contains legal conclusions to which no response is required. To the extent this
6 Paragraph could be construed as containing factual allegations, Defendants deny each and every
7 allegation contained in this Paragraph.

8 **Procedural Safeguards Duty**

9 43. Responding to Paragraph 43 of the Complaint, Defendants note that the entire
10 paragraph contains legal conclusions to which no response is required. To the extent this
11 Paragraph could be construed as containing factual allegations, Defendants deny each and every
12 allegation contained in this Paragraph.

13 44. Responding to Paragraph 44 of the Complaint, Defendants note that the entire
14 paragraph contains legal conclusions to which no response is required. To the extent this
15 Paragraph could be construed as containing factual allegations, Defendants deny each and every
16 allegation contained in this Paragraph.

17 45. Responding to Paragraph 45 of the Complaint, Defendants note that the entire
18 paragraph contains legal conclusions to which no response is required. To the extent this
19 Paragraph could be construed as containing factual allegations, Defendants deny each and every
20 allegation contained in this Paragraph.

21 **Appropriate Instruction by Qualified Personnel Duty**

22 46. Responding to Paragraph 46 of the Complaint, Defendants note that the entire
23 paragraph contains legal conclusions to which no response is required. To the extent this
24 Paragraph could be construed as containing factual allegations, Defendants deny each and every
25 allegation contained in this Paragraph.

26 47. Responding to Paragraph 47 of the Complaint, Defendants note that the entire
27 paragraph contains legal conclusions to which no response is required. To the extent this
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Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

48. Responding to Paragraph 48 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

49. Responding to Paragraph 49 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

Evaluation Duty

50. Responding to Paragraph 50 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

51. Responding to Paragraph 51 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

52. Responding to Paragraph 52 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

53. Responding to Paragraph 53 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

Special Education Duty

54. Responding to Paragraph 54 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

55. Responding to Paragraph 55 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

56. Responding to Paragraph 56 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

Monitoring Duty

57. Responding to Paragraph 57 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

SECTION 504

58. Responding to Paragraph 58 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

59. Responding to Paragraph 59 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

60. Responding to Paragraph 60 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

61. Responding to Paragraph 61 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

62. Responding to Paragraph 62 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

63. Responding to Paragraph 63 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

64. Responding to Paragraph 64 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

65. Responding to Paragraph 65 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

TITLE II OF THE ADA

66. Responding to Paragraph 66 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this

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Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

67. Responding to Paragraph 67 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

68. Responding to Paragraph 68 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

69. Responding to Paragraph 69 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

70. Responding to Paragraph 70 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

71. Responding to Paragraph 71 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

72. Responding to Paragraph 72 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

73. Responding to Paragraph 73 of the Complaint, Defendants note that the entire

1 paragraph contains legal conclusions to which no response is required. To the extent this
 2 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 3 allegation contained in this Paragraph.

4 CALIFORNIA STATE LAW

5 74. Responding to Paragraph 74 of the Complaint, Defendants note that the entire
 6 paragraph contains legal conclusions to which no response is required. To the extent this
 7 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 8 allegation contained in this Paragraph.

9 75. Responding to Paragraph 75 of the Complaint, Defendants note that the entire
 10 paragraph contains legal conclusions to which no response is required. To the extent this
 11 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 12 allegation contained in this Paragraph.

13 76. Responding to Paragraph 76 of the Complaint, Defendants note that the entire
 14 paragraph contains legal conclusions to which no response is required. To the extent this
 15 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 16 allegation contained in this Paragraph.

17 77. Responding to Paragraph 77 of the Complaint, Defendants note that the entire
 18 paragraph contains legal conclusions to which no response is required. To the extent this
 19 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 20 allegation contained in this Paragraph.

21 78. Responding to Paragraph 78 of the Complaint, Defendants note that the entire
 22 paragraph contains legal conclusions to which no response is required. To the extent this
 23 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 24 allegation contained in this Paragraph.

25 **FACTUAL ALLEGATIONS**

26 **Dyslexia and Its Impact**

27 79. Responding to Paragraph 79 of the Complaint, Defendants note that the entire
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paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

80. Responding to Paragraph 80 of the Complaint, Defendants note that the entire paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

81. Responding to Paragraph 81 of the Complaint, Defendants note that the entire paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

82. Responding to Paragraph 82 of the Complaint, Defendants note that the entire paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

83. Responding to Paragraph 83 of the Complaint, Defendants note that the entire paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

Defendants' Unlawful Policies and Practices

84. Responding to Paragraph 84 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

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85. Responding to Paragraph 85 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

86. Responding to Paragraph 86 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

87. Responding to Paragraph 87 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

88. Responding to Paragraph 88 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

89. Responding to Paragraph 89 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

90. Responding to Paragraph 90 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

91. Responding to Paragraph 91 of the Complaint, Defendants note that the entire paragraph contains expert opinion and/or legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

92. Responding to Paragraph 92 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

93. Responding to Paragraph 93 of the Complaint, BUSD has used the “severe discrepancy” method to determine whether a child has a SLD that may entitle him/her to special education services. Defendant notes that the remainder of this Paragraph contains legal conclusions to which no response is required. To the extent the remaining allegations could be construed as containing factual allegations, Defendants deny each and every remaining allegation contained therein.

94. Responding to Paragraph 94 of the Complaint, Defendants deny each and every allegation contained within this Paragraph.

1 95. Responding to Paragraph 95 of the Complaint, Defendants deny each and every
2 allegation contained within this Paragraph.

3 96. Responding to Paragraph 96 of the Complaint, Defendants deny each and every
4 allegation contained within this Paragraph.

5 97. Responding to Paragraph 97 of the Complaint, Defendants deny each and every
6 allegation contained within this Paragraph.

7 98. Responding to Paragraph 98 of the Complaint, Defendants deny each and every
8 allegation contained within this Paragraph.

9 **Plaintiffs Are Excused from Exhaustion of Administrative Remedies**

10 99. Responding to Paragraph 99 of the Complaint, Defendants deny that any
11 exceptions apply to excuse Plaintiffs from complying with the administrative exhaustion
12 requirements under the IDEA. Defendants note that remainder of this Paragraph contains legal
13 conclusions to which no response is required. To the extent the remaining allegations could be
14 construed as containing factual allegations, Defendants deny each and every remaining allegation
15 contained therein.

16 100. Responding to Paragraph 100 of the Complaint, Defendants admit that on or
17 about May 29, 2015, the Disability Rights Education and Defense Fund, Inc. (“DREDF”) filed a
18 compliance resolution process (“CRP”) complaint against BUSD, North Region Special
19 Education Local Plan Area (SELPA), and the California Department of Education (“CDE”).
20 Defendants note that remainder of this Paragraph contains legal conclusions to which no
21 response is required. To the extent the remaining allegations could be construed as containing
22 factual allegations, Defendants deny each and every remaining allegation contained therein.

23 101. Responding to Paragraph 101 of the Complaint, Defendants deny that the CDE
24 was incorrect in finding that BUSD was in compliance with regard to all SLD-related
25 allegations. Defendants further deny each and every remaining allegation contained in this
26 Paragraph.

27 102. Responding to Paragraph 102 of the Complaint, Defendants admit that in or about
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1 September 4, 2015, DREDF challenged the appropriateness of the CDE's compliance
2 determinations relating to BUSD's policies and practices regarding dyslexia. Defendants deny
3 each and every remaining allegation contained in this Paragraph.

4 103. Responding to Paragraph 103 of the Complaint, Defendants admit that the CDE
5 notified DREDF that it would (and did) reconsider its CRP complaint. Defendants deny that
6 CDE "summarily rejected" DREDF's request for systemic corrective actions. Defendants further
7 deny that the CDE refused to conduct a "meaningful investigation" of the complaint. Rather, the
8 CDE conducted further investigation of the matter, to include interviews with parents of the
9 Students referred to in the CRP complaint and further investigation and interview with BUSD
10 regarding its policies, and concluded that BUSD was in compliance. Defendants further deny
11 each and every remaining allegation contained in this Paragraph.

12 104. Responding to Paragraph 104 of the Complaint, Defendants note that the entire
13 paragraph contains legal conclusions to which no response is required. To the extent this
14 Paragraph could be construed as containing factual allegations, Defendants deny each and every
15 allegation contained in this Paragraph.

16 105. Responding to Paragraph 105 of the Complaint, Defendants note that the entire
17 paragraph contains legal conclusions to which no response is required. To the extent this
18 Paragraph could be construed as containing factual allegations, Defendants deny each and every
19 allegation contained in this Paragraph.

20 106. Responding to Paragraph 106 of the Complaint, Defendants note that the entire
21 paragraph contains legal conclusions to which no response is required. To the extent this
22 Paragraph could be construed as containing factual allegations, Defendants deny each and every
23 allegation contained in this Paragraph.

24 107. Responding to Paragraph 107 of the Complaint, Defendants note that the entire
25 paragraph contains legal conclusions to which no response is required. To the extent this
26 Paragraph could be construed as containing factual allegations, Defendants deny each and every
27 allegation contained in this Paragraph.

108. Responding to Paragraph 108 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

Plaintiff Student A

109. Responding to Paragraph 109 of the Complaint, Defendants admit that Student A is a student at a BUSD elementary school. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

110. Responding to Paragraph 110 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

111. Responding to Paragraph 111 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

112. Responding to Paragraph 112 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

113. Responding to Paragraph 113 of the Complaint, Defendants deny that it failed to provide Student A's parents with written notice regarding the results of Student A's IEP or that it failed to consider Student A for a Section 504 Plan. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

114. Responding to Paragraph 114 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

115. Responding to Paragraph 115 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

116. Responding to Paragraph 116 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

1 117. Responding to Paragraph 117 of the Complaint, Defendants lack sufficient
 2 information upon which to form a belief as to the truth of the allegations contained in this
 3 Paragraph, and on that basis deny them.

4 **Plaintiff Student B**

5 118. Responding to Paragraph 118 of the Complaint, Defendants admit that Student B
 6 is a student at a BUSD elementary school. To the extent that this paragraph contains legal
 7 conclusions, no response is required. Defendants lack sufficient information upon which to form
 8 a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis
 9 deny them.

10 119. Responding to Paragraph 119 of the Complaint, Defendants deny that it did not
 11 timely carry out its Child Find mandate with respect to Student B. Defendants lack sufficient
 12 information upon which to form a belief as to the truth of the remaining allegations contained in
 13 this Paragraph, and on that basis deny them.

14 120. Responding to Paragraph 120 of the Complaint, Defendants deny that BUSD
 15 failed to refer Student B for evaluation. Defendants lack sufficient information upon which to
 16 form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that
 17 basis deny them.

18 121. Responding to Paragraph 121 of the Complaint, Defendants admit that BUSD
 19 found Student B eligible for special education services. Defendants deny each and every of the
 20 remaining allegations contained in this Paragraph.

21 122. Responding to Paragraph 122 of the Complaint, Defendants deny each and every
 22 allegation contained in this Paragraph.

23 123. Responding to Paragraph 123 of the Complaint, Defendants deny that it refused to
 24 offer or provide any appropriate specialized academic instruction for Student B. Defendants
 25 further deny that any services offered to Student B were inadequate. Defendants lack sufficient
 26 information upon which to form a belief as to the truth of the remaining allegations contained in
 27 this Paragraph, and on that basis deny them.

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1 124. Responding to Paragraph 124 of the Complaint, Defendants deny that it refused to
2 offer or provide any appropriate specialized academic instruction for Student B. Defendants
3 further deny that it “unilaterally” changed Student B’s placement or that it failed to provide
4 written notice explaining its position. To the extent that this paragraph contains legal
5 conclusions, no response is required. Defendants lack sufficient information upon which to form
6 a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis
7 deny them.

8 125. Responding to Paragraph 125 of the Complaint, Defendants deny each and every
9 allegation contained in this Paragraph.

10 126. Responding to Paragraph 126 of the Complaint, Defendants admit that BUSD
11 held IEP meeting for Student B but otherwise deny each and every allegation contained in this
12 Paragraph.

13 127. Responding to Paragraph 127 of the Complaint, Defendants lack sufficient
14 information upon which to form a belief as to the truth of the remaining allegations contained in
15 this Paragraph, and on that basis deny them.

16 128. Responding to Paragraph 128 of the Complaint, Defendants deny that BUSD has
17 a “general policy” to refuse and/or deny research based interventions for children with SLDs or
18 that it “ignored” any recommendations with regards to Student B. Defendants lack sufficient
19 information upon which to form a belief as to the truth of the remaining allegations contained in
20 this Paragraph, and on that basis deny them.

21 129. Responding to Paragraph 129 of the Complaint, Defendants deny that BUSD
22 offered no specific or appropriate individualized academic instruction to Student B.

23 130. Responding to Paragraph 130 of the Complaint, Defendants deny each and every
24 allegation contained in this Paragraph.

25 131. Responding to Paragraph 131 of the Complaint, Defendants admit that Parent B
26 filed a due process complaint on behalf of Student B. However, Parent B did not pursue a due
27 process hearing for Student B.

Plaintiff Student C

139. Responding to Paragraph 139 of the Complaint, Defendants deny that BUSD has failed to provide Student C with any meaningful or appropriate special education and related aids and services. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

Plaintiff Student D

140. Responding to Paragraph 140 of the Complaint, to the extent that this paragraph contains legal conclusions, no response is required. Defendants admit that Student D was a student at Berkeley High School and that Student D was identified by BUSD as an individual with a disability. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

141. Responding to Paragraph 141 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

142. Responding to Paragraph 142 of the Complaint, to the extent that this paragraph contains legal conclusions with regard to BUSD obligations pursuant to a “Child Find” duty, no response is required. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

143. Responding to Paragraph 143 of the Complaint, to the extent that this paragraph contains legal conclusions with regard to BUSD obligations to refer Student D for an evaluation, no response is required. Defendants otherwise deny the allegations contained in this Paragraph.

144. Responding to Paragraph 144 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

145. Responding to Paragraph 145 of the Complaint, to the extent that this paragraph contains legal conclusions with regard to BUSD obligations to refer Student D for an evaluation, no response is required. Defendants lack sufficient information upon which to form a belief as to the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

146. Responding to Paragraph 146 of the Complaint, Defendants lack sufficient information upon which to form a belief as to the truth of the allegations contained in this Paragraph, and on that basis deny them.

147. Responding to Paragraph 147 of the Complaint, Defendants deny that BUSD has

1 a “culture” of requiring parents and their children to “prove” that the child needs
 2 accommodations. Defendants lack sufficient information upon which to form a belief as to the
 3 truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

4 148. Responding to Paragraph 148 of the Complaint, to the extent that this paragraph
 5 contains legal conclusions with regard to Student D’s eligibility for special education services,
 6 no response is required. Defendants lack sufficient information upon which to form a belief as to
 7 the truth of the remaining allegations contained in this Paragraph, and on that basis deny them.

8 149. Responding to Paragraph 149 of the Complaint, Defendants lack sufficient
 9 information upon which to form a belief as to the truth of the allegations contained in this
 10 Paragraph, and on that basis deny them.

11 150. Responding to Paragraph 150 of the Complaint, Defendants lack sufficient
 12 information upon which to form a belief as to the truth of the allegations contained in this
 13 Paragraph, and on that basis deny them.

14 151. Responding to Paragraph 151 of the Complaint, Defendants lack sufficient
 15 information upon which to form a belief as to the truth of the allegations contained in this
 16 Paragraph, and on that basis deny them.

17 152. Responding to Paragraph 152 of the Complaint, Defendants lack sufficient
 18 information upon which to form a belief as to the truth of the allegations contained in this
 19 Paragraph, and on that basis deny them.

20 153. Responding to Paragraph 153 of the Complaint, Defendants lack sufficient
 21 information upon which to form a belief as to the truth of the allegations contained in this
 22 Paragraph, and on that basis deny them.

23 154. Responding to Paragraph 154 of the Complaint, Defendants deny each and every
 24 allegation contained in this Paragraph.

25 **CLASS ACTION DEFINITION ALLEGATIONS**

26 155. Responding to Paragraph 155 of the Complaint, Defendants note that the entire
 27 paragraph contains legal conclusions to which no response is required. To the extent this
 28

Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

156. Responding to Paragraph 156 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

157. Responding to Paragraph 157 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

158. Responding to Paragraph 158 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

159. Responding to Paragraph 159 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

160. Responding to Paragraph 160 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

161. Responding to Paragraph 161 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

162. Responding to Paragraph 162 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every

1 allegation contained in this Paragraph.

2 163. Responding to Paragraph 163 of the Complaint, Defendants deny each and every
3 allegation contained in this Paragraph.

4 164. Responding to Paragraph 156 of the Complaint, Defendants note that the entire
5 paragraph contains legal conclusions to which no response is required. To the extent this
6 Paragraph could be construed as containing factual allegations, Defendants deny each and every
7 allegation contained in this Paragraph.

8 **LEGAL CLAIMS**

9 **First Claim for Relief**

10 **Violations of the IDEA, 20 U.S.C. §§ 1400 et seq., 34 C.F.R. Pt. 300**

11 **(On Behalf of all Plaintiffs, Class Members)**

12 165. Responding to Paragraph 165 of the Complaint, Defendants incorporate by
13 reference its response to Paragraphs 1 through 164 of the Complaint as if fully set forth herein.

14 166. Responding to Paragraph 166 of the Complaint, Defendants note that the entire
15 paragraph contains legal conclusions to which no response is required. To the extent this
16 Paragraph could be construed as containing factual allegations, Defendants deny each and every
17 allegation contained in this Paragraph.

18 167. Responding to Paragraph 167 of the Complaint, Defendants note that the entire
19 paragraph contains legal conclusions to which no response is required. To the extent this
20 Paragraph could be construed as containing factual allegations, Defendants deny each and every
21 allegation contained in this Paragraph.

22 168. Responding to Paragraph 168 of the Complaint, Defendants admit that BUSD is a
23 recipient of federal funds. The remainder of this Paragraph contains legal conclusions to which
24 no response is required. To the extent the remaining allegations contained in this Paragraph
25 could be construed as containing factual allegations, Defendants deny each and every remaining
26 allegation.

27 169. Responding to Paragraph 169 of the Complaint, Defendants deny each and every
28

allegation contained in this Paragraph.

170. Responding to Paragraph 170 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

171. Responding to Paragraph 171 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

172. Responding to Paragraph 172 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

173. Responding to Paragraph 173 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

174. Responding to Paragraph 174 of the Complaint, Defendants deny each and every allegation contained in this Paragraph.

Second Claim for Relief

Violations of Section 504, 29 U.S.C. § 794, 34 C.F.R. Pt. 104

(On Behalf of all Plaintiffs, Class Members)

175. Responding to Paragraph 175 of the Complaint, Defendants incorporate by reference its response to Paragraphs 1 through 174 of the Complaint as if fully set forth herein.

176. Responding to Paragraph 176 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

177. Responding to Paragraph 177 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

178. Responding to Paragraph 178 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every

1 allegation contained in this Paragraph.

2 179. Responding to Paragraph 179 of the Complaint, Defendants admit that BUSD is a
3 recipient of federal funds. The remainder of this Paragraph contains legal conclusions to which
4 no response is required. To the extent the remaining allegations contained in this Paragraph
5 could be construed as containing factual allegations, Defendants deny each and every remaining
6 allegation.

7 180. Responding to Paragraph 180 of the Complaint, Defendants deny each and every
8 allegation contained in this Paragraph.

9 181. Responding to Paragraph 181 of the Complaint, Defendants deny each and every
10 allegation contained in this Paragraph.

11 182. Responding to Paragraph 182 of the Complaint, Defendants deny each and every
12 allegation contained in this Paragraph.

13 183. Responding to Paragraph 183 of the Complaint, Defendants deny each and every
14 allegation contained in this Paragraph.

15 184. Responding to Paragraph 184 of the Complaint, Defendants deny each and every
16 allegation contained in this Paragraph.

17 **Third Claim for Relief**

18 **Disability Discrimination – Failure to Accommodate in Violation of Title II of the ADA 42**

19 **U.S.C. §§ 12131 et seq., 28 C.F.R. § 35.130**

20 **(On Behalf of all Plaintiffs, Class Members)**

21 185. Responding to Paragraph 185 of the Complaint, Defendants incorporate by
22 reference its response to Paragraphs 1 through 184 of the Complaint as if fully set forth herein.

23 186. Responding to Paragraph 186 of the Complaint, Defendants note that the entire
24 paragraph contains legal conclusions to which no response is required. To the extent this
25 Paragraph could be construed as containing factual allegations, Defendants deny each and every
26 allegation contained in this Paragraph.

27 187. Responding to Paragraph 187 of the Complaint, Defendants note that the entire
28

1 paragraph contains legal conclusions to which no response is required. To the extent this
 2 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 3 allegation contained in this Paragraph.

4 188. Responding to Paragraph 188 of the Complaint, Defendants note that the entire
 5 paragraph contains legal conclusions to which no response is required. To the extent this
 6 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 7 allegation contained in this Paragraph.

8 189. Responding to Paragraph 189 of the Complaint, Defendants note that the entire
 9 paragraph contains legal conclusions to which no response is required. To the extent this
 10 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 11 allegation contained in this Paragraph.

12 190. Responding to Paragraph 190 of the Complaint, Defendants deny each and every
 13 allegation contained in this Paragraph.

14 191. Responding to Paragraph 191 of the Complaint, Defendants deny each and every
 15 allegation contained in this Paragraph.

16 192. Responding to Paragraph 192 of the Complaint, Defendants deny each and every
 17 allegation contained in this Paragraph.

18 193. Responding to Paragraph 193 of the Complaint, Defendants deny each and every
 19 allegation contained in this Paragraph.

20 194. Responding to Paragraph 194 of the Complaint, Defendants deny each and every
 21 allegation contained in this Paragraph.

22 **Fourth Claim for Relief**

23 **Violations of Cal. Educ. Code §§ 56000 *et seq.*, Cal. Code Regs. tit. 5 §§ 3030 *et seq.***

24 **(On Behalf of all Plaintiffs, Class Members)**

25 195. Responding to Paragraph 195 of the Complaint, Defendants incorporate by
 26 reference its response to Paragraphs 1 through 194 of the Complaint as if fully set forth herein.

27 196. Responding to Paragraph 196 of the Complaint, Defendants note that the entire
 28

1 paragraph contains legal conclusions to which no response is required. To the extent this
 2 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 3 allegation contained in this Paragraph.

4 197. Responding to Paragraph 197 of the Complaint, Defendants note that the entire
 5 paragraph contains legal conclusions to which no response is required. To the extent this
 6 Paragraph could be construed as containing factual allegations, Defendants deny each and every
 7 allegation contained in this Paragraph.

8 198. Responding to Paragraph 198 of the Complaint, Defendants admit that
 9 Defendants are responsible for providing public education to BUSD students.

10 199. Responding to Paragraph 199 of the Complaint, Defendants deny each and every
 11 allegation contained in this Paragraph.

12 200. Responding to Paragraph 200 of the Complaint, Defendants deny each and every
 13 allegation contained in this Paragraph.

14 201. Responding to Paragraph 201 of the Complaint, Defendants deny each and every
 15 allegation contained in this Paragraph.

16 202. Responding to Paragraph 202 of the Complaint, Defendants deny each and every
 17 allegation contained in this Paragraph.

18 203. Responding to Paragraph 203 of the Complaint, Defendants deny each and every
 19 allegation contained in this Paragraph.

20 204. Responding to Paragraph 204 of the Complaint, Defendants deny each and every
 21 allegation contained in this Paragraph.

22 **Fifth Claim for Relief**

23 **Declaratory Relief**

24 **(On Behalf of All Plaintiffs, Class Members)**

25 205. Responding to Paragraph 205 of the Complaint, Defendants incorporate by
 26 reference its response to Paragraphs 1 through 204 of the Complaint as if fully set forth herein.

27 206. Responding to Paragraph 206 of the Complaint, Defendants admit the allegations
 28

1 contained in this Paragraph.

2 207. Responding to Paragraph 207 of the Complaint, Defendants note that the entire
3 paragraph contains legal conclusions to which no response is required. To the extent this
4 Paragraph could be construed as containing factual allegations, Defendants deny each and every
5 allegation contained in this Paragraph.

6 208. Responding to Paragraph 208 of the Complaint, Defendants deny each and every
7 allegation contained in this Paragraph.

8 **PRAYER FOR RELIEF**

9 209. Responding to Paragraph 209 of the Complaint, Defendants note that the entire
10 paragraph contains legal conclusions to which no response is required. To the extent this
11 Paragraph could be construed as containing factual allegations, Defendants deny each and every
12 allegation contained in this Paragraph.

13 210. Responding to Paragraph 210 of the Complaint, Defendants note that the entire
14 paragraph contains legal conclusions to which no response is required. To the extent this
15 Paragraph could be construed as containing factual allegations, Defendants deny each and every
16 allegation contained in this Paragraph.

17 211. Responding to Paragraph 211 of the Complaint, Defendants note that the entire
18 paragraph contains legal conclusions to which no response is required. To the extent this
19 Paragraph could be construed as containing factual allegations, Defendants deny each and every
20 allegation contained in this Paragraph.

21 212. Responding to Paragraph 212 of the Complaint, Defendants note that the entire
22 paragraph, including subparagraphs 1 through 7, contain legal conclusions to which no response
23 is required. To the extent this Paragraph and/or any corresponding subparagraph could be
24 construed as containing factual allegations, Defendants deny each and every allegation contained
25 therein.

26 213. Responding to Paragraph 213 of the Complaint, Defendants note that the entire
27 paragraph contains legal conclusions to which no response is required. To the extent this
28

Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph

214. Responding to Paragraph 214 of the Complaint, Defendants note that the entire paragraph contains legal conclusions to which no response is required. To the extent this Paragraph could be construed as containing factual allegations, Defendants deny each and every allegation contained in this Paragraph.

AFFIRMATIVE DEFENSES

Defendants allege the following as further and separate affirmative defenses to Plaintiffs' Complaint, without assuming any burden of proof that would otherwise rest on the Plaintiffs:

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint, and each of the purported claims for relief set forth herein, are barred by applicable state and federal statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint, and each of the purported claims for relief set forth herein, fail due to Plaintiffs' and/or the members of the proposed classes' failure to timely and/or completely exhaust all administrative remedies and/or judicial remedies as required by law.

FOURTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs lack standing to bring some or all of the claims, which are therefore barred. Plaintiffs also do not have standing to serve as an adequate class representative.

FIFTH AFFIRMATIVE DEFENSE

Defendants assert that, at all relevant times, Defendants acted in good faith and in substantial compliance with all applicable laws and regulations, and/or in reliance on a written order, ruling, approval and/or reasonable interpretation of the applicable laws by the California

Department of Education.

SIXTH AFFIRMATIVE DEFENSE

Defendants assert that the Complaint, and each of the purported claims for relief set forth herein, are barred by the doctrine of waiver and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs and/or the members of the proposed classes are barred by the doctrines of *res judicata*, collateral estoppel, and/or similar doctrines.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs and/or members of the proposed classes are guilty of undue delay in filing and prosecuting this suit, and accordingly, this action is barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs cannot meet the class certification requirements of Federal Rule 23.

TENTH AFFIRMATIVE DEFENSE

Defendants enjoy qualified immunity, and/or absolute immunity against each and every one of Plaintiffs' claims.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that at all times herein relevant, any and all acts, conduct by and/or attributed to Defendants was justified, undertaken in good faith and/or privileged, and did not violate any rights Plaintiffs and/or members of the proposed classes may have had under federal, state or local laws, rules, regulations or guidelines.

TWELFTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiffs have failed to include all necessary parties to this action.

RESERVATION OF AFFIRMATIVE DEFENSES

Defendants allege that they do not presently know all of the facts concerning Plaintiffs' conduct and/or claims sufficient to state all affirmative defenses at this time, and thus reserve the right to seek leave to amend this Answer should Defendants later discover facts to support additional affirmative defenses.

PRAYER

WHEREFORE, Defendant prays as follows:

1. That Plaintiff's Complaint, and the whole thereof, be dismissed;
2. That Plaintiff take nothing by reason of the Complaint;
3. That this suit cannot be maintained as a class action;
4. That judgment be rendered in favor of Defendant;
5. For entry of a declaratory judgment against Plaintiff and in favor of Defendant;

and,

6. For such other relief as the court deems just and proper.

JURY DEMAND

Defendant hereby demands a trial by jury of all issues triable by jury.

Dated: November 13, 2017

GORDON REES
SCULLY MANSUKHANI, LLP

By: /s/ Beatriz Berumen
Mark S. Posard
Beatriz Berumen
Attorneys for Defendants